

Appendix K

K.0 Current Management Situation

K.1 Federal Laws

The purpose of Appendix K is to document the current public land management policies in those portions of the Northern and Eastern Mojave Planning Area (NEMO Planning Area) administered by the Bureau of Land Management (BLM). This evaluation will aid in defining the No Action Alternative and Alternatives proposed in Chapter 2 of this document. The need for revision of land use policies in the NEMO Planning Area is based largely on the USFWS listing of the desert tortoise as a threatened species and several other species under the Federal Endangered Species Act, signing of the California Desert Conservation Area Plan (CDCA Plan) (BLM 1980), tortoise population declines, and the recommendations in the 1994 Desert Tortoise (Mojave Population) Recovery Plan¹. The adoption of National Standards and Guidelines and the need to adopt regional standards for public land health, Guidelines for Grazing Management, Congressional designation of wilderness and release of some wilderness study areas from further consideration are also considered. See the CDCA Plan for more information on all elements of the CDCA Plan.

K.2 Applicable Federal and State Laws

The Bureau of Land Management operates under a number of federal and state laws and regulations. The following is a brief listing of the major laws that affect BLM's management of public lands. Some of these laws are specifically referenced within this EIS and some are here as reference. Decisions within the EIS will not affect BLM's responsibility to adhere to and/or enforce these laws.

K.2.1 Federal Laws

National Environmental Policy Act (NEPA)

NEPA requires all federal agencies to analyze the environmental impacts of any proposed action affecting public lands or resources, to involve the public in decision-making, and to disclose environmental impacts to the public. NEPA also requires that the analysis be interdisciplinary and issue driven and that the cumulative and indirect effects be reported. An EIS is required for any major federal action significantly affecting the quality of the human environment.

Taylor Grazing Act (TGA)

With amendments, this act is the basic legislative authority governing grazing use on the vacant public lands of the United States.

Federal Land Policy and Management Act (FLPMA): This law established public land policy providing for the retention and management of the public lands held in Federal ownership, including special provisions for land use planning and range management.

¹ Recovery Plan (USFWS 1994a) (see Sec. 3.1.3 - *Desert Tortoise (Mojave Population) Recovery Plan*)

Mining Law of 1872

This Act provides that citizens may enter and explore the public domain. If they find “valuable mineral deposits”, they may obtain title to the land on which such deposits are located. It also requires that not less than \$100 worth of work be performed on each claim per year. The patenting provision was placed under a moratorium by the 1994 Appropriations Act, and through successive legislation remains in effect as of the date of the preparation of the NEMO Plan.

Mining and Minerals Policy Act of 1970

This Act declares that it is the continuing policy of the Federal Government to foster and encourage private enterprise in the development of a stable domestic minerals industry and the orderly and economic development of domestic mineral resources.

National Materials and Minerals Policy, Research and Development Act of 1980

This Act restates the need to implement the 1970 Act and requires the Secretary of the Interior to improve the quality of minerals data in Federal land-use decision-making. In April 1982, the President delivered to Congress the first annual report required by the 1980 Act, which provided specific guidance to implement these acts.

Public Rangelands Improvement Act of 1978 (PRIA)

This legislation supports the authority of the Taylor Grazing Act and the Federal Land Policy and Management Act by emphasizing the improvement of rangeland conditions.

Wild Free-Roaming Horse and Burro Act

This act provides for the protection, management, and control of wild horses and burros on public lands administered by the BLM and the U.S. Forest Service. Its’ goal is to keep the wild horse herds from disappearing, yet keep the herds at appropriate management levels to maintain a healthy functioning ecosystem. The act allows removal of animals if necessary to “restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.”

Endangered Species Act (ESA)

This act requires the federal land management agencies to protect and enhance all species and their habitats on federal lands that are listed as endangered, threatened, or proposed for listing. Included in this act in Section 7 is a required process for all federal agencies to consult with the U.S. Fish and Wildlife Service regarding any federal action that may affect a federally listed threatened or endangered species.

Clean Water Act (CWA)

This law's objective is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. It directs federal agencies to comply with water quality standards, including initiating actions to control non-point sources of pollution such as grazing, as determined by each respective state government as approved by EPA administrators.

Coastal Zone Act Re-authorization (CZARA) as amended in 1990

This act is applicable to all waters in California and places requirements on the states to address non-point source pollution in several categories, including rangeland. The federal agencies, such as the Bureau of Land Management, are to cooperate with the state in fulfilling these requirements.

Federal Noxious Weed Act of 1974

This act as amended in 1990 (Section 15), adds further responsibility for the federal land management agencies, in cooperation with state agencies, to actively pursue the control of undesirable plants using an integrated management approach.

Antiquities Act of 1906 and amendments

This act provides for the protection of historic and prehistoric sites and objects of antiquity on federal lands; and authorizes scientific investigation of such sites and antiquities, subject to permits and other regulatory requirements. Paleontological resources are also covered by this act.

Executive Order 13007

This executive order affirms that Native Americans have the right to access specific spiritual and sacred sites on federal lands as long as that access is not inconsistent with the administrative goals of the BLM.

Archeological Resources Protection Act

This act prohibits the removal, sale, receipt, and interstate transportation of archeological resources obtained without permits from public or Indian lands and authorizes agency permit procedures for investigations of archeological resources on public lands under the agency's control. Amendments state that the Secretaries of the Interior, Agriculture and Defense shall develop plans for surveying the lands under their control to determine the nature and extent of archeological resources, prepare a schedule for surveying those lands that are likely to contain the most scientifically valuable archeological resources, and develop documents for reporting suspected violations. Tribes are given 30 days to comment on permits for the excavation of archeological resources within their "Aboriginal Territory."

National Historic Preservation Act of 1966 (NHPA)

This act established historic preservation as a national policy and defines it as the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. Significance is determined by specific criteria. The National Park Service maintains the National Register of Historic Places.

Executive Order of April 29, 1994

This Executive Order established that it is the policy of the United States that formal government-to-government relationships shall be established between agency heads and all formally recognized Native American tribes. This policy provides the impetus for developing protocols and memoranda of understanding between the BLM and the federally recognized tribes. BLM has also applied the policy to unrecognized Native American Indian communities.

K.2.2 State Laws (California and Nevada)

Porter-Cologne Water Quality Control Act

This act establishes a comprehensive water quality program for the state of California, through the State Water Resources Control Board, including a non-point source program on rangelands. This act gives authority to nine semi-autonomous Regional Water Quality Control Boards within the state.

California Food and Agriculture Code, Section 403 and Title 3, California Code of Regulations, Section 4500

These codes provide the responsibilities and priorities governing the California Department of Food and Agriculture to protect the agricultural industry of the state by controlling weeds on all lands, including federally owned rangelands.

California Endangered Species Act

This act is administered by the California Department of Fish and Game, and is patterned after the federal Endangered Species Act. The Act provides state listing and protection responsibilities for species determined to be specifically protected within California.

California Native Plant Protection Act

This 1977 act provided for the California Department of Fish and Game to “preserve, protect, and enhance endangered plants in California”.

Surface Mining and Reclamation Act (SMARA)

Enacted by the State of California Legislature in 1975, the SMARA is the State’s response to society’s need for a continuing supply of mineral resources, while preventing, as much as possible, damage from mining activities to public health, property, and the environment. Although Public Resources Code Sections 2711 and 2712 focus on reclamation, they also state the need to consider that mineral extraction and production are essential and should be encouraged. SMARA requires the State Geologist to classify land in California for mineral resource potential. “Local governments are required to incorporate the report and maps into their General Plans and consider the information when making land-use decisions.”

K.3 Existing Management Situation

K.3.1 Air

There are a number of basic federal statutes, executive orders and state laws that direct BLM’s response to air quality issues. Generally, compliance with the various laws and policy has been achieved through the NEPA process. Through the NEPA process proposed projects are evaluated as to their potential emissions and the compliance with law, and appropriate mitigation measures are identified.

K.3.2 ACECs

The Federal Land Management Policy Act (FLPMA) established the authority to designate Areas of Critical Environmental Concern (ACEC) (Section 103 (a)). The Act defined an ACEC as an area within the public lands where special management attention is required. The CDCA Plan and publication in the Federal Register established 72 ACECs. Since that time several additional ACECs have been established and a few have been deleted. Within the NEMO Planning Area there are 11 ACECs remaining on BLM lands. The ACECs were designated due to historic, prehistoric, wildlife, scenic and plant values. Each ACEC has a management plan, which spells out management prescriptions necessary to meet the objectives for the area. These prescriptions include details like signing, patrol needs, monitoring, construction of facilities and possible restrictions on uses. Specific details on the ACECs can be found in the individual ACEC plans.

K.3.3 Wildlife

A number of public laws, acts and executive orders provide direction to the BLM in managing wildlife resources. Some of these are the National Environmental Policy Act of 1969; Endangered Species Act of 1973 (as amended); Sikes Act; Executive Order No. 11514, Protection and Enhancement of Environmental Quality; Executive Orders 11644 and 11989, Off-Road Vehicles on Public Lands; Executive Order 11990, Protection of Wetlands; Executive Order 11988, Floodplain Management; and the Federal Land Policy And Management Act of 1976. The BLM has translated applicable parts of these laws, acts, and executive orders into policies and guidance, which are contained within the BLM manual system. BLM Manual 6840 provides direction to the wildlife program for Threatened and Endangered Wildlife, and Manual 6740 provides direction for Wetland-Riparian Area Protection and Management.

The CDCA Plan identifies wildlife management goals. Several management tools are available to meet the objectives of the Wildlife Element of the CDCA Plan. The principal one is activity plans such as ACEC plans and habitat management plans (HMPs) which were identified in the CDCA Plan. An approved plan of operation is required for any mining operation (with the exception of casual use) prior to commencing work in an ACEC (43 CFR Ch II Subpart 3809-Surface Management), regardless of the size of the operation. Mining plans of operation trigger the NEPA review and compliance process. Some fish and wildlife resources requiring special management attention can be protected in Multiple-Use Class L through the designation of routes. A fourth tool used in the CDCA Plan is designation of Special Areas (SA). This allows highlighting habitats and species known to be important for special consideration of projects in the environmental assessment process. For a detailed discussion of the current management situation in NEMO for the desert tortoise, see Foreman (1998).

Bats

Bat management concerns in BLM management activities center primarily around mineral and energy production issues and the management of recreation use of cave resources. Bureau policy specific to bats is based on a Master Memorandum of Understanding between the BLM and Bat Conservation International. Signed on March 20, 1993, the MOU states the joint desire of BLM and BCI to "...cooperate fully with each other in matters relating to the inventory and monitoring of key bat habitats, education, research and management improvement of bat habitats through development and maintenance activities on BLM lands." The Master MOU has resulted in specific Washington Office guidance to field offices regarding "Use of Caves Important to Bats" and "Closure of Abandoned Mines and Preservation of Bat Habitat." Instruction Memorandum No.1 93-291 states that "...State Directors should ensure that sufficient expertise is developed in each State to evaluate effects of BLM management policies and activities on bats."

In general, BLM policy requires an inventory of mines proposed for renewed mining prior to initiating mining activity. The policy also requires minimization of impacts to bat roosts and foraging habitat; and where impacts to bats are determined likely as the result of an authorized mining action, humane treatment and elimination of bat occupancy/entry into the subject mine. In areas where no active mining occurs, bats are occasionally documented in specific mine shafts and/or adits, but these bat family groups or colonies are often at risk due to human visitation disturbance and vandalism impacts. Many bat species will abandon maternity, hibernation, and/or day roosts with a single inappropriate human visitation.

Very little formalized bat inventory has occurred on public lands within the planning area. Bat use of a specific mine is occasionally documented during field visits to complete NEPA analysis on mining actions, but there is seldom adequate time to conduct appropriate surveys and/or develop meaningful mitigation unless the proposed mining action is located in a MUC L designated area. The existing MUC M designation allows locatable mining actions to be conducted under a Notice of Proposed Action. Under Code of Federal Regulations (CFR) 3809 mining notice provisions, BLM has 15 days to review the proposed mining activity and take any actions necessary to stop or modify the proposed action. When there are known special status wildlife species in an area, site surveys are necessary to evaluate the proposed action. Due to mandated time constraints, it is seldom possible to schedule and conduct the necessary inventories, recommend meaningful mitigation, and prepare supporting report documentation in the time allowed. Additionally, many special status species, like bats, have a limited time of year when adequate inventories can be conducted. When bats are documented to occur in a specific mine or group of mines through NEPA analysis of mining actions, mitigation that is designed to secure replacement bat habitat for the habitat to be lost to mining, seldom occurs.

Desert Bighorn Sheep

Management plans for this species in southwestern deserts commonly have defined mountain sheep populations on the basis of their geographic location, usually a single mountain range (Bureau of Land Management 1986). Movement corridors and the ranges/areas in which bighorn sheep occur have been defined in the CDCA Plan.

The BLM developed the “Rangewide Plan for Managing Habitat of the Desert Bighorn Sheep on Public Lands” (1986) in which the goal was to “facilitate recovery of desert bighorn sheep in the Southwest through a balanced program of inventory, on-the-ground projects, monitoring, and research.” The “Mountain Sheep Ecosystem Management Strategy in the 11 Western States and Alaska” (1995) was developed with the goal of “providing habitat of sufficient quantity and quality to sustain optimum populations and a natural abundance of wildlife on public lands...” CDFG in cooperation with BLM is preparing “metapopulation” plans for various regions of the desert. These will set population and habitat goals and prescribe management actions.

K.3.4 Vegetation

Vegetation, especially in the riparian areas, is affected by visitor use and authorized activities, such as mining, livestock grazing, wild horses and burros and wildlife development. These activities will continue to affect vegetation, as will wildfire. Recreation use is mostly controlled through route designations, which limit OHV access to critical sites. Except for mining notices, all proposed activities receive a NEPA review that includes field checks for special status plants and UPAs. The NEPA review includes the development of expected impacts and recommended mitigation. Minerals actions conducted on MUC class M or Class I lands under a Notice of Proposed Action receive minimal review under NEPA and do not need authorization. The minerals operator may proceed after 15 days from the filing of the notice. This does not allow adequate time to mitigate general impacts to vegetation.

The CDCA Plan identified a number of unusual plant assemblages (UPAs) and established goals to preserve their habitat and ensure the continued existence of the plant assemblage. These UPAs include areas which are unique in the desert because of size, unusual age, areas associated with water (like riparian forests, mesquite bosques and marshes) and other unique vegetation areas. The CDCA Plan states that all UPAs will be taken into account when conducting site-specific NEPA analyses. The CDCA Plan also identified the need to conduct inventory to identify additional UPAs.

Special Status Plants

It is BLM’s policy to carry out management, consistent with the principles of multiple use, for the conservation of Special Status Plant Species and their habitats and will ensure that actions authorized, funded, or carried out do not contribute to the need to federally list any of the species as threatened or endangered. Potential projects, which could impact special status plant species, will normally be reviewed through the NEPA process. If potential impacts are found the impact is avoided by modifying the project to avoid special status plants and their habitats. For MUC class M lands for small (under five acres) mining projects that can be filed under a notice, the fifteen-day review period may be insufficient to conduct record searches and field inventories and recommend mitigation measures.

Noxious Weeds

The BLM has been actively eradicating noxious weeds for a number of years. In the CDCA, much of the effort has been aimed at the eradication of salt cedar, which invades and damages riparian areas. The interest in weed management has been increasing in recent years. Executive Order 13112 was issued in February 1999 to address noxious weeds. In addition the BLM has issued several policy statements relating to noxious weeds. Most relate to detection and reducing mechanisms that spread weeds. These include: 1) the use of native seed that is certified weed free, 2) the use of weed-free mulch, 3) the requiring of weed-free hay on BLM lands (as it becomes available), and 4) the need to inventory for and report locations and acres of noxious weeds.

K.3.5 Water

A large number of water sources exist within the NEMO planning area. Known surface water sources in the northwestern portion of the NEMO planning area include numerous streams, springs, seeps, and a lake. Most of the mountain ranges in the northwestern area reach over 10,000 feet elevation and have numerous steep canyons that support streams. These include the Middle Park, Pleasant, Happy, Surprise, Hall, Jail and Tubor Canyons in the Panamint mountains, Thompson Canyon in the Argus Range, Craig, Hunter, Beverage, Keynot, Mc Elvoy, Pat Keys and Willow Creek Canyons in the Inyo Mountains and Weyman, Cottonwood, Toler, McAfee and Perry Akin Canyons in the White Mountains. Weyman, Cottonwood, McAfee and Perry Akin creeks all support trout fisheries and are diverted near their mouth for irrigation. Cottonwood Creek alone supplies most of the water for 1,600 acres of alfalfa (nearly 10,000 acre feet from April to November). Several large springs occur on private land in Deep Springs Valley. One, Corral Spring, has a very large flow and is one of the major sources of water for Deep Springs Lake, which covers nearly 2,000 acres, and an associated wetland. Numerous additional springs and seeps are scattered throughout the northwest portion of the planning area. Other significant water sources include the Amargosa River, Willow Creek, Grimshaw Lake, Salt Creek and Tecopa Hot Springs.

Groundwater is found under most of the NEMO planning area and varies greatly in depth and quality. The many groundwater basins within the NEMO planning area are recharged from surface and subsurface infiltration. Depletion of groundwater basins and diminishment of water quality are some of the concerns with this resource. Groundwater is the principle source within the NEMO planning area for desert springs, seeps, and streams. Maintenance of groundwater quality and quantity is critical to the survival of desert surface waters and their associated plant and animal life.

K.3.6 Cultural Resources

Processes for managing and evaluating cultural resources are defined in several pieces of legislation, most notably the National Historic Preservation Act (NHPA) of 1966 (as amended). The NHPA established requirements for considering the effects of agency actions on cultural resources, proactive management of cultural resources because of their importance to the nation, and consultation with other agencies or interested parties regarding their management. The BLM has a programmatic agreement with the State Historic Preservation Officer regarding implementation of the NHPA. Significant resources are nominated to the National Register of Historic Places (NRHP) as funding and other resources permit. Determinations as to whether cultural resources are eligible for listing on the National Register are usually made on a site-by-site, ad hoc basis. Inventory and recordation primarily occur when required because of a proposed action. Additional guidelines for management of cultural resources are included in the CDCA Plan, including MUC guidelines. Certain mining activities, which can affect cultural resources, may occur 15 days after a Notice of Intent is filed, subject to resource protection measures identified within that time frame. Site-specific management for significant cultural resources is provided in ACEC management plans, where applicable.

Cultural resources at all of the very high and high sensitivity cultural sites in MUC “T” and “M” are subject to potential effect from mining actions under CFR 3809 following a 15-day period after filing of a Notice of Intent. Within this 15-day time frame the following activities may need to occur: inventory, evaluation, and identification of avoidance and/or recovery strategies for these sensitive resources. Consultations with Native Americans and with the State Office of Historic Preservation must also occur within the 15-day time period. When significant resources are identified within the 15-day period, consultation and avoidance strategies or other mitigation are identified and additional delays could occur until these evaluations are completed. However there is a risk from inadvertent damage or destruction of such resources if they cannot be identified within the 15-day time frame. Because of the low level of existing inventory data it is not possible to fully measure the potential loss of cultural, traditional, and public values in these areas from proposed actions unless these predisturbance surveys can be performed. This impact is generally irreversible and irretrievable.

Mining activity may also attract or facilitate other activities into an area if the mining activity results in improved access. Other activity attracted into the area or facilitated by it may increase the level of impacts to cultural resources in the area. The known sensitive cultural resources that need to be evaluated include historic mining complexes that may be or are known to be historically valuable and/or are popular sites for public visitation and offer excellent interpretive/heritage tourism opportunities. They also include prehistoric sites of a unique, unusual, or scientifically significant nature, or that hold sacred or cultural value to Native Americans such as rock alignments, sites at which stone was quarried for tool manufacture, or habitation sites with subsurface deposits. The CDCA Plan called for these high sensitivity areas to be adequately inventoried. Due to resource limitations less than 10% of the areas has been inventoried to date.

K.3.7 Minerals

Mineral Resource Management

Federal regulations recognize three methods for disposing minerals from the public lands. Saleable minerals are those mineral materials that are disposed via a sales contract (common stone, gravel, fill dirt, etc.). Such materials are also permitted to public agencies via a Free Use Permit. Leasable minerals are those minerals for which the government receives a fixed percentage of their sales price (a royalty) under the terms of a lease. Leasable minerals include oil & gas, geothermal production, coal, sodium and potassium minerals. Locatable minerals are those minerals for which one can locate a mining claim under the General Mining Law of 1872, including gold, silver, talc, etc. In general, public lands are open to mineral exploration and development except where specifically closed or withdrawn from the public land laws.

Mineral Material Disposals (Sales & Permits)

A BLM Field Manager may dispose of mineral materials upon receipt of a written request or upon his/her own initiative. These disposals include Sale Contracts, Free Use Permits (to public agencies or non-profit organizations) and Community Pits (for sales to the general public). A written request includes a mining plan that describes how the material will be removed and how the site will be reclaimed.

The Field Office staff then prepares an environmental document as required by the National Environmental Protection Act (NEPA); this generally means a Categorical Exclusion, Environmental Assessment or Environmental Impact Statement, as appropriate. At a minimum, these environmental documents generally include consideration of and mitigation measures for cultural resources and threatened and endangered species. If/when the request is approved, the contract or permit is written to include appropriate mitigation measures and reclamation standards. Performance bonds are required for sale contracts of \$2000 or greater.

No mineral material disposals are issued in Wilderness or Wilderness Study Areas. Mineral materials may be disposed of in lands classified as “T”, “M” or “L” in the California Desert Conservation Area Plan. An Environmental Assessment, rather than Categorical Exclusion, is prepared for new cases affecting 5+ acres of Class L land (MUC Guidelines, CDCA Plan).

Mineral Leases

Mineral leases are generally issued by the California State Office rather than by a Field Manager prior to conducting operations on the lease. The lessee must submit an appropriate “Notice” or application to the field manager prior to conducting operations on the lease. The Field Office staff then analyzes the proposed action and prepares an environmental document as required by NEPA (a Categorical Exclusion, Environmental Assessment or Environmental Impact Statement, as appropriate). At a minimum, such analysis includes consideration of threatened and endangered species and cultural resources. Other issues (e.g., underground aquifers, road standards, etc.) are also considered as appropriate. The field manager includes reclamation measures and mitigation measures in any authorization of the proposed action.

No mineral leases are issued in Wilderness or Wilderness Study Areas. However, if an area containing a valid lease is absorbed by the National Wilderness Preservation System, the leaseholder is accorded the rights granted under the terms of that lease. No such leases are included in any Wilderness or Wilderness Study Area in the NEMO planning area. Mineral leases can be issued in lands classified as L, M or I by the California Desert Conservation Area Plan. An environmental document, as per NEPA guidelines, is prepared when the Field Manager receives an Application/Notice for lease-related operations in Class L, M or I land; a 60-day public comment period is provided for lease-related Environmental Assessments in Class L lands (MUC Guidelines, CDCA Plan).

Locatable Minerals (Mining Claims)

The Location Notice for any mining claim must be filed and registered both with the county recorder of the appropriate county and the BLM State Office in Sacramento, California. In general, a valid mining claim is one that is properly located, registered, and contains a discovery of a valuable mineral deposit. A valuable mineral deposit is one that is shown to be economically valuable or can be worked as a paying mine (Maley, 1985). An operator has the responsibility to prevent unnecessary and undue degradation of Federal lands resulting from operations authorized by the mining laws. The regulations for avoiding unnecessary or undue degradation to the public lands are contained in 43 CFR 3809.

The Code of Federal Regulations recognizes three levels of Mining Law-related operations on public lands. Casual use operations are those activities that ordinarily result in only negligible disturbance of public lands and resources (gold panning, metal detecting, etc.). No approval or notification is needed for casual use activities on public lands. Activities are not considered casual use if they involve using explosives, mechanized earth-moving equipment, or motorized vehicles in an area designated as closed to off-road vehicles.

Other than casual use activities, the BLM has decided (65 FR 70002, Nov. 21, 2000) that the threshold between Notice and Plan-level activity) should generally be set between exploration and mining. In the California Desert, an operator must file a "Notice" prior to initiating operations that disturb 5 acres or less or involve sampling less than 1,000 tons in Class M and I land. Among other things, the Notice must describe the project, the reclamation measures and must be received by the Field Manager at least 15 days prior to commencing operations. Approval of a Notice by the Field Manager is not required, and properly filed Notices constitute authorization for off-road vehicle use. Notice-type operations are required to comply with all pertinent state and federal laws, including the California Surface Mining And Reclamation Act (SMARA), threatened and endangered species protection, and cultural resource protection. Existing programmatic agreements are in place for many small mining actions.

The BLM does not accept Notices for non-casual use activities in Class L land, Areas of Critical Environmental Concern, Wilderness and Wilderness Study Areas. An operator must file a Plan of Operations for any operation in these areas or which exceeds 5 acres or 1,000 tons of sampling in Class "M" or "I" lands. Among other things, a plan of operations must describe when, where, how and what type of operation is to be conducted and what measures will be taken to reclaim disturbed areas. The Field Office staff is required to promptly prepare an Environmental Assessment for any plan of operations.

Any such environmental assessment must include consideration for any cultural elements that may be affected, including as appropriate cultural resources and threatened and endangered species. The Field Manager cannot approve a Plan of Operations if the BLM has need to comply with section 106 of the National Historic Preservation Act or Section 7 of the Endangered Species Act. An operator must file a "Plan of Operations" for any operation in these areas or which exceeds 5 acres or 1,000 tons of sampling in Class "M" or "I" lands. An operator must also post a financial guarantee sufficient to cover 100% of the cost of reclamation, prior to conducting operations under a "Plan of Operations" or a Notice. An exception will be made for notices filed with BLM on January 20, 2001 unless the operator modifies the notice or extends it under part 3809.333. This financial guarantee must either be certified by a California-registered engineer, or accepted by a state agency but in no case, can the guarantee be less than \$2000/acre.

Wilderness Study Areas

Federal Regulations allow mining claim location, prospecting, and mining operations in Wilderness Study Areas (43 CFR 3802), but only in a manner that will not impair the suitability of the area for inclusion in the wilderness system. An approved "Plan of Operations" is required for operations within lands under wilderness review. The Field Manager acknowledges and reviews a "Plan of Operations" to determine if the proposed operations impair the suitability of the project area for preservation as wilderness. He/she may approve the plan subject to mitigating measures that prevent impairment of the suitability of the area for wilderness, or notifies the operator why the Plan is not acceptable. No plans of operation are on file for any of the Wilderness Study Areas in the NEMO Planning Area.

Wilderness

New mining claims cannot be located in a designated wilderness area. Some designated wilderness areas occasionally include mining claims that were located prior to the date the area was included in the National Wilderness Preservation System. Federal regulations (43 CFR 8560.4-6) state that no mining operations shall be conducted on BLM-administered wilderness areas without an approved Plan of Operations as per 43 CFR 3809.

As stated above, current regulations require a Plan of Operations to include a reclamation bond as required by state and federal statutes; the bond amount must cover the cost of reclaiming the land in such a way as to prevent the impairment of their wilderness character (43 CFR 8560.4-6(h)). A Field Manager cannot approve this “Plan of Operations” unless or until a BLM mineral examiner completes a validity examination of the unpatented mining claim. As stated above, an unpatented mining claim is valid if that claim contains a discovery mineral deposit that might reasonably be developed into a paying mine; the claim is invalid if it does not contain such a discovery.

K.3.8 Motor Vehicle Access Management

The BLM manages motor vehicle access in the California desert consistent with FLPMA, Executive Order (EO) 11644, EO11989, Title 43 of the Code of Federal Regulations (CFR) 8340 et seq., and the CDCA Plan, as amended in 1982 and 1985. The increased popularity and widespread use of off-highway vehicles on federal lands in the 1960’s and early 1970’s prompted the development of a unified policy for such use. Executive Order 11644 (“Use of Off-Road Vehicles on the Public Lands”) was issued on February 9, 1972 (87 FR 2877), to establish these policies. It provided for procedures to control and direct the use of OHV’s on federal lands so as to

- Protect the resources of those lands
- Promote the safety of all users of those lands
- Minimize conflicts among the various uses of those lands

The order directs the agency heads responsible for managing the federal lands to issue regulations governing the designation of areas where OHV’s may and may not be used. Under the order, OHV use can be restricted or prohibited to minimize:

- Damage to the soil, watersheds, vegetation, or other resources of the federal lands
- Harm to wildlife or wildlife habitats
- Conflicts between the use of OHVs and other types of recreation

It also requires the federal agencies to issue OHV use regulations, inform the public of the lands’ designation for OHV use through signs and maps, enforce OHV use regulations, and monitor the effects of OHV use on the land.

Executive Order 11989 (“Off-Road Vehicles on Public Lands”) was issued on May 24, 1977 (42 FR 26959), and contains three amendments to the previous order. While these amendments lift restrictions on the use of military and emergency vehicles on public lands during emergencies, they otherwise strengthen protection of the lands by authorizing agency heads to:

- Close areas or trails to OHVs causing considerable adverse effects
- Designate lands as closed to OHVs unless the lands or trails are specifically designated as open to them

The BLM developed regulations (43 CFR 8340) in response to the executive orders. These regulations require the agency to designate areas where OHVs may be used and to manage the use of OHVs on public lands through the resource management planning process, which allows for public participation. The regulations also require the BLM to monitor the use of OHVs, identify any adverse effects of their use, and take appropriate steps to counteract such effects.

In 1980, the BLM addressed designation of areas where OHVs may be used and management of their use for the California desert in the CDCA Plan, Motor Vehicle Access Element. In the CDCA Plan, different levels of access were provided for both areas and specific routes in the desert. Areas could be “open”, “closed”, or “limited”. Generally “open” areas are open to vehicle use throughout the area and “closed” areas are closed to vehicle use throughout the area. There are exceptions for both of these areas and these are further defined in the CDCA Plan and in other referenced legislation and regulation.

Within “limited” areas, specific route designations are to be made, and at a minimum, use will be restricted to existing routes of travel. Routes are to be designated “open”, “closed”, or “limited”, and the guidelines are established based on Multiple-use class. Within MUC I, unless it is determined that further limitations are necessary, those areas not “open” will be limited to use of existing routes. Within MUC M, access will be on existing routes, unless it is determined that use on specific routes must be limited further. Within MUC L, due to higher levels of resource sensitivity, vehicle access will be directed toward use of approved routes of travel. Approved routes will include primary access routes intended for regular use and for linking desert attractions for the general public as well as secondary access routes intended to meet specific user needs. Routes not approved for vehicle access will be reviewed and, after opportunity for public comment, those routes deemed to conflict with management objectives or to cause unacceptable resource damage will be given priority for closure through obliteration, barricading, or signing. (CDCA Plan, Amendment #3, 1982).

K.3.9 Livestock Grazing

Livestock grazing is primarily authorized under the Taylor Grazing Act as amended (43 U.S.C. 315, 315a through 315r). Additional authorities include the Federal Land Policy and Management Act of 1976, the Public Rangeland Improvement Act, several executive orders and public land orders. In addition, numerous land laws including the National Environmental Policy Act and the Endangered Species Act apply to the administration of grazing on the public lands. Grazing regulations are found in 43 CFR part 4100. The process to allocate grazing use involves a number of steps including the classification of an area as suitable for grazing, an adjudication process to determine who is eligible to graze, the determination of allocations, numbers of livestock, class of livestock (sheep, cattle and/or horses) and seasons of use. For the most part grazing use predates the Taylor Grazing Act (1934) and grazing use has been authorized under those provisions since the mid 1930s. The CDCA Plan readdressed all of these issues except for the adjudication of eligibility. In addition, it addressed additional prescriptions for grazing including monitoring needs, needs for allotment management plans (AMPs) and mitigation for resource conflicts such as sensitive wildlife species.

If an operator chooses to make less use than his full allocation he may apply for non-use (such as for droughts or other environmental reasons). If the non-use is for personal reasons (such as personal economic reasons) BLM may temporarily authorize another qualified applicant to graze the amount of authorized non-use. If an authorized operator chooses to give up his grazing authorization any qualified person may apply for the unused allocation.

All of the CDCA Plan prescriptions (including AUM allocations, seasons of use, area of use, restrictions due to resource conflicts and the need for AMPs) were issued to all of the operators as decisions in the early 1980s and have been incorporated into the grazing leases/permits. Many of the high priority allotments now have AMPs that include monitoring plans, grazing management systems and proposed range improvements to implement the AMPs. Rangeland Reform resulted in the development of a new set of Fundamentals of Rangeland Health and National Standards and Guidelines for Grazing Administration (43 CFR 4180.1-2). There are 17 grazing allotments in the planning area and 5 of the allotments have not yet been assessed for standards for rangeland health. One allotment out of the 12 that were assessed for health standards, failed to meet the riparian standard because of livestock grazing. Allotments that do not meet Standards due to livestock grazing will have specific actions developed to remedy the situation that could include negative decisions being issued to the operator.

K.3.10 Wild Horse & Burro

Wild horses and burros are protected by the Federal Wild Free-Roaming Horse and Burro Act of December 15, 1971 (16 U.S.C. 1331-1340), as amended. Implementation regulations are found in 43 CFR Part 4700. Under the act, Congress declared that wild horses and burros are protected and are an integral part of the public land resources. BLM is required to achieve and maintain population levels, which ensure an ecological balance. The areas where horses and burros were known to exist at the time of the passage of the Wild Free-Roaming Horse and Burro Act are known as Herd Areas (HAs) and provide the upper limit of potential management areas for these animals. The CDCA Plan called these areas Herd Management Areas (HMAs). It also identified concentration areas where wild horses and burros tend to concentrate based on several factors, including water, vegetation and terrain. The CDCA Plan for available AUMs evaluated these areas. It also recommended management number of wild horses and burros within these units. The CDCA Plan used this information to identify retention areas, where these animals are to be managed, and prescribed population levels.

BLM currently manages wild horses and burros under existing CDCA Plan and HMA Plans, where developed. Appropriate management levels (AMLs), a single number which is the upper level of an established population range, were set in the plans based on available forage and water, and other resource needs or conflicts. Since the 1980 CDCA Plan was approved, herd areas generally have had populations in excess of the AMLs set in the plan. To decrease populations, many animals have been removed and placed into the BLM's National Wild Horse and Burro Adoption Program. Several HMAs still have an excess of animals, while others no longer have herds.

There are no fences between BLM administered lands, most private lands, and NPS lands (Mojave National Preserve and Death Valley National Park), so some migration between these lands is possible. To minimize migration, activities may include, reducing herds where established populations exceed appropriate levels, placing the animals into the BLM's adoption program, moving herd management areas, erecting fencing, and/or providing additional improvements such as water sources on public lands. BLM coordinates removal of unwanted wild horses and burros from NPS land on a case-by-case basis.

Status of the California Desert District Burro Herd Areas and Herd Management Areas

Table K-1 displays: 1)) All the burro herd areas recognized in the CDCA Plan (1980) and assigned acreages; 2)) Herd management areas (HMAs) designated in 1980, associated acreages and appropriate management levels (AML); 3)) Year 2001 status of herd area acreages, herd areas with an asterisk had a reduction in their acreages due to the transfer of Public lands to the National Park Service (NPS) through the 1994 California Desert Protection Act); 4)) Year 2001 status of herd management area acreages and associated AMLs, and 5)) The estimated burro population for the herd areas and herd management areas. The Piper Mountain and Chicago Valley HMAs, no longer have burro populations, but still have an assigned AML. Several amendments to the CDCA Plan (1980) removed the HMA designation and assigned 0 acres and reduced the AML to 0. HMA acreages affected by lands transferred to the NPS are shown with two asterisks (**), which advertently reduced their AML. The NPS does not manage for burros. Any herd area or HMA transferred to the NPS are not applicable (NA) to the 1971 Wild Free-Roaming Horse and Burro Act.

Table K.1 – Current Status of California Desert Burro Herd Areas and Herd Management Areas

Burro Herd Areas	Herd Area Acreage 1980 ²	HMA Acreage 1980	AML 1980	Current Herd Area Acreages 2001 ²	Current HMA Acreage 2001 ²	AML 2001	Estimated Burro Population 2001
Piper Mountains*	104,661	104,661	82	97,434	96,303	82	0
Last Chance/ Sand Spring*	240,837	0	0	43,569	0	0	0
Waucoba/Hunter Mountains*	519,129	389,347	444	44,685	22,686**	29	80
Lee Flat*	135,505	123,310	30	88,523	73,330**	15	14
Centennial*	1,030,311	721,218	1,137	1,023,384	0	0	100
Panamint*	414,686	207,343	240	214,450	0	0	123
Slate Range*	512,951	487,303	408	492,020	0	0	70
Chicago Valley*	331,612	278,173	28	314,377	278,173	28	0
Clark Mountains*	233,410	75,349	44	196,140	75,349	44	170
Lava Beds*	179,254	173,876	75	Transferred to NPS	NA	NA	NA
Granite/Providence Mountains*	192,735	0	0	Transferred to NPS	NA	NA	NA
Woods/Hackberry*	56,540	0	0	Transferred to NPS	NA	NA	NA
Cima Dome*	93,199	93,199	55	Transferred to NPS	NA	NA	NA
Piute Mountains	39,781	0	0	39,781	0	0	37
Dead Mountains	42,757	0	0	42,757	0	0	19
Chemehuevi	406,894	406,894	150	406,894	406,894	150	598
Chocolate/Mule Mountains	386,069	386,069	22	386,069	386,069	22	26
Kramer	14,024	14,024	16	14,024	0	0	0
Morongo	39,159	39,159	16	39,159	0	0	0
Total	4,973,514	3,500,465	2,747	3,443,266	1,338,804	370	1,292

² GIS Calculated

** HMA acreages affected by lands transferred to the NPS, which would reduce also their AML

Table K.2 – Status of the California Desert District Horse Herd Areas and Herd Management Areas

Horse Herd Areas	Herd Area Acreage ² 1980	HMA Acreage 1980	AML 1980	Current Herd Area Acreages ² 2001	Current HMA Acreage ² 2001	AML 2001	Estimated Horse Population 2001
Piper Mountain ³	104,661	104,661	17	97,434	96,303	17	40
Centennial ³	1,030,311	317,140	168	1,023,384	317,140	168	220
Chicago Valley ³	331,612	278,173	28	314,377	278,173	28	4
Waucoba/Hunter Mtn.	519,129	0	0	44,685	0	0	0
Woods/Hackberry	39,400	39,400	6	0	0	0	N/A ⁴
Picacho	45,928	45,928	42	45,928	45,928	42	0
Palm Canyon	11,500	11,500	6	11,500	11,500	6	8
Coyote Canyon ⁵	20,700	20,700	20	0	0	0	N/A ⁴
Total	2,103,241	817,502	287	1,537,308	749,044	261	272

K.4 SUMMARY

This Appendix has documented current policies affecting the primary resources and uses in the NEMO Planning Area. Additional information on the existing situation, including resources that are specifically affected by alternatives proposed in this planning effort, is discussed in Chapter 3: Affected Environment. In addition, a separate current desert tortoise management situation is available at BLM field offices with jurisdiction in the NEMO Planning Area as well as the California Desert District Office in Riverside, California.

³ Herd areas reduced in their acreages due to the transfer of Public lands to the National Park Service (NPS) through the 1994 California Desert Protection Act

⁴ N/A – Not Applicable

⁵ Herd area transferred to Anza Borrego State Park